IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.974 of 2006
in
FIRST APPEAL 16123 OF 2003.

Fulchandji Keshavrajji Muttha ..Applicant

versus

Nathuram Udharam Chaudhari
& Others ..Respondents

Mr.V.G.Mujumdar for the Applicant

Coram : S.R.Sathe, J.
Dated : 1st Mar, 2006

P.C.

1. Heard learned Advocate for the Applicant. He has drawn my attention to AIR 1978 patna, 267 and AIR 1956 Allahabad 714 wherein it has been held that if the earlier order regarding dismissal is passed in the absence of both the parties then for recalling the said order or setting aside the same, it is not necessary to issue notice to the other side. However, in my opinion, this can't be a blanket rule. Ultimately, after considering the facts and circumstances of the case one has to decide whether it is necessary to issue notice to the other side before setting aside the earlier order recalling dismissal.

2. As the Appellant did not pay the deficit Court fee in time, registration of the appeal was refused. The applicant has therefore filed the present application to condone the delay in filing the restoration application and setting aside the order of refusal of registration.

3. For the reasons mentioned in the application it is necessary in the interest of justice to condone the delay and set aside the order of refusal of registration. Hence the order.

. On applicant depositing cost of Rs.500/- (Rupees Five Hundred Only) in this Court, the First Appeal Stamp No.16123 of 2003 be restored.

. The applicant to pay deficit court fees thereafter within one week failing which the registration of the appeal shall stand refused for ever.

. C.A. disposed of accordingly.

(S.R.Sathe, J.)